

AMENDED IN ASSEMBLY APRIL 11, 2016

AMENDED IN ASSEMBLY MARCH 28, 2016

AMENDED IN ASSEMBLY MARCH 17, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2844

Introduced by Assembly Member Bloom

(Principal coauthors: Assembly Members Levine, Medina, and Nazarian)

(Principal coauthors: Senators Allen, Block, Glazer, Hertzberg, Jackson, and Wolk)

(Coauthors: Assembly Members Campos, Dababneh, and Olsen)

February 19, 2016

An act to add Chapter 2.6 (commencing with Section 2100) to Part 1 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2844, as amended, Bloom. Public contracts: California Combating the Boycott, Divestment, and Sanctions of Israel Act of 2016.

Existing law governs the procurement process for contracts of specified public entities. Existing law prohibits a person that, at the time of bid or proposal for a new contract or renewal of an existing contract, engages in investment activities in Iran from bidding on, submitting a proposal for, or entering into, a contract with a public entity for goods or services of \$1,000,000 or more.

This bill, with certain exceptions, would prohibit a public entity, which includes state and local entities, from entering into a contract, on or after January 1, 2017, with a company that is participating in the boycott of Israel, as provided. *The bill would require the Attorney*

General to develop, or contract to develop, a list of companies it determines are engaging in a boycott of Israel. The bill would prohibit a company that, at the time of bid or proposal for a new contract or renewal of an existing contract, is identified on that list from bidding on, submitting a proposal for, or entering into or renewing a contract with a public entity to acquire or dispose of goods, services, information technology, or construction for \$10,000 or more. The bill would require a public entity to require a company that submits a bid or proposal to, or otherwise proposes to enter into or renew a contract with, the public entity with respect to a contract for goods or services for \$10,000 or more to certify, at the time the bid is submitted or the contract is renewed, that the company is not identified on the list. The bill would provide that if a public entity or the Department of General Services determines that a company has submitted a false certification, and the company fails to demonstrate to the local public entity or the Department of General Services that the company has ceased engaging in a boycott of Israel within 90 days after the determination of a false certification, the company would be subject to a civil penalty of \$250,000 or twice the amount of the contract for which the false certification was made, whichever is greater; termination of an existing contract with the awarding body at the option of the awarding body or the Department of General Services, and ineligibility to bid on a contract for a period of 3 years from the date of the determination that the company submitted the false certification. The bill would find and declare that these provisions of this bill are a matter of statewide concern due to the political nature of contracting with a company that is participating in the boycott of Israel, and therefore, these provisions apply to charter cities, charter counties, and a charter city and county and supersede any inconsistent charter provision.

By imposing additional duties with respect to local public contracting, this bill would impose a state-mandated local program.

~~This bill also would require the Governor's Office of Business and Economic Development to incentivize specified activities between Israel and California and to disincentivize barriers hindering those activities.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 California Combating the Boycott, Divestment, and Sanctions of
3 Israel Act of 2016.

4 SEC. 2. The Legislature finds and declares the following:

5 (a) The United States and Israel have a unique bond based on
6 their shared, enduring values, which are reflected in the virtues
7 and principles of freedom and democracy, and have stood together
8 as allies since Israel was first formed as a nation.

9 (b) California and Israel have established business partnerships
10 and trade relations with each other, and those partnerships have
11 helped enhance the agricultural, educational, energy, entertainment,
12 health, medical, scientific, and water policies in California, Israel,
13 and the United States.

14 (c) On March 5, 2014, as the culmination of an effort started as
15 Assembly Bill 1032 of the 2009–10 Regular Session, the Governor
16 of California and the Prime Minister of Israel signed a
17 memorandum of understanding (MOU) for strategic partnerships
18 for joint innovation, exchanges, and cooperation between California
19 and Israel.

20 (d) In July 2015, the Legislature affirmed its support for the
21 MOU by passing Senate Concurrent Resolution 25, noting that
22 participants in the MOU had already expanded cooperation between
23 Israel and California in areas such as alternative energy, agriculture,
24 business innovation, and academia, and declaring that collaboration
25 with Israel will foster peace and democracy in the Middle East.

26 (e) Boycotts of Israel by companies doing business in California
27 undermine the aforesaid express policy and purpose of encouraging
28 trade, business, and academic cooperation between California and
29 Israel. Therefore, it is in the best interests of the State of California
30 that it not contract with any company participating in a boycott of
31 Israel.

32 (f) Notwithstanding any other law, including, but not limited
33 to, Section 1100.7 of the Public Contract Code, the provisions of

1 this measure address the political nature of contracting with a
2 company that is participating in the boycott of Israel and the need
3 for the government of this state to respond to the policies of Israel
4 in a uniform fashion, a matter of statewide concern, and therefore,
5 shall apply to charter cities, charter counties, and a charter city
6 and county.

7 SEC. 3. Chapter 2.6 (commencing with Section 2100) is added
8 to Part 1 of Division 2 of the Public Contract Code, to read:

9
10 CHAPTER 2.6. CALIFORNIA COMBATING THE BOYCOTT,
11 DIVESTMENT, AND SANCTIONS OF ISRAEL ACT OF 2016
12

13 2100. (a) Notwithstanding any other law, and except as
14 provided in subdivision (d), a public entity shall not enter into a
15 contract on or after January 1, 2017, to acquire or dispose of goods,
16 services, information technology, or for construction if the
17 contracting company is participating in a boycott of Israel.

18 ~~(b) A public entity shall notify any company determined to be~~
19 ~~participating in a boycott of Israel that the public entity is~~
20 ~~prohibited from contracting with the company and permit that~~
21 ~~company to respond to the notification. The public entity shall~~
22 ~~request that the company take substantial action to cease its boycott~~
23 ~~of Israel no later than 90 days from the date the public entity~~
24 ~~notified the company under this subdivision. If the public entity~~
25 ~~determines that a company has taken substantial action to cease~~
26 ~~its boycott of Israel before the expiration of that 90-day period,~~
27 ~~that company shall not be subject to subdivision (a).~~

28 *(b) A company that, at the time of bid or proposal for a new*
29 *contract or renewal of an existing contract, is identified on a list*
30 *created pursuant to subdivision (c) as a company engaging in a*
31 *boycott of Israel is ineligible to, and shall not, bid on, submit a*
32 *proposal for, or enter into or renew a contract with a public entity*
33 *to acquire or dispose of goods, services, information technology,*
34 *or construction for ten thousand dollars (\$10,000) or more.*

35 *(c) (1) The Department of General Services shall, using*
36 *information available to the public contained in the report*
37 *presented to the Congress pursuant to Section 909 of the Federal*
38 *Trade Facilitation and Trade Enforcement Act of 2015, develop,*
39 *or contract to develop, a list of companies it determines are*
40 *engaging in a boycott of Israel.*

1 (2) *The Department of General Services shall update the list*
2 *every 180 days.*

3 (3) *Before finalizing an initial list pursuant to paragraph (1)*
4 *or an updated list pursuant to paragraph (2), the Department of*
5 *General Services shall do all of the following before a company*
6 *is included on the list:*

7 (A) *Provide 90 days' written notice of its intent to include the*
8 *company on the list. The notice shall inform the company that*
9 *inclusion on the list would make the company ineligible to bid on,*
10 *submit a proposal for, or enter into or renew a contract for goods,*
11 *services, information technology, or construction for ten thousand*
12 *dollars (\$10,000) or more with a public entity. The notice shall*
13 *specify that the company, if it ceases engaging in a boycott of*
14 *Israel and is removed from the list, may become eligible for a*
15 *future contract, or contract renewal, for goods, services,*
16 *information technology, or construction for ten thousand dollars*
17 *(\$10,000) or more with a public entity.*

18 (B) *The Department of General Services shall provide a*
19 *company with an opportunity to comment in writing to the*
20 *Department of General Services that it is not engaging in a boycott*
21 *of Israel. If the company demonstrates to the Department of*
22 *General Services that the company is not engaging in a boycott*
23 *of Israel, the company shall not be included on the list and shall*
24 *be eligible to enter into or renew a contract for goods, services,*
25 *information technology, or construction for ten thousand dollars*
26 *(\$10,000) or more with a public entity, unless the company is*
27 *otherwise ineligible to bid on a contract pursuant to subparagraph*
28 *(C) of paragraph (2) of subdivision (d).*

29 (4) *The Department of General Services shall make every effort*
30 *to avoid erroneously including a company on the list.*

31 (d) (1) *A public entity shall require a company that submits a*
32 *bid or proposal to, or otherwise proposes to enter into or renew*
33 *a contract with, the public entity with respect to a contract for*
34 *goods or services for ten thousand dollars (\$10,000) or more to*
35 *certify, at the time the bid is submitted or the contract is renewed,*
36 *that the company is not identified on a list created pursuant to*
37 *subdivision (c) as a company that is engaging in a boycott of Israel.*
38 *A state agency shall submit the certification information to the*
39 *Department of General Services.*

1 (2) *If a public entity, or the Department of General Services in*
2 *the case of a state agency, determines, using credible information*
3 *available to the public and after providing 90 days' written notice*
4 *and an opportunity to comment in writing to the company for it to*
5 *demonstrate that it is not engaging in a boycott of Israel, that a*
6 *company has submitted a false certification, and the company fails*
7 *to demonstrate to the local public entity or the Department of*
8 *General Services that the company has ceased engaging in a*
9 *boycott of Israel within 90 days after the determination of a false*
10 *certification, the company shall be subject to all of the following:*

11 (A) *Pursuant to an action under subdivision (e), a civil penalty*
12 *in an amount that is equal to the greater of two hundred fifty*
13 *thousand dollars (\$250,000) or twice the amount of the contract*
14 *for which the false certification was made. Only one civil penalty*
15 *may be imposed with respect to one or more certifications made*
16 *to any public entity that are false as a result of a particular*
17 *contract.*

18 (B) *Termination of an existing contract with the awarding body*
19 *at the option of the awarding body or the Department of General*
20 *Services.*

21 (C) *Ineligibility to bid on a contract for a period of three years*
22 *from the date of the determination that the company submitted the*
23 *false certification.*

24 (e) (1) *A local public entity, or the Department of General*
25 *Services in the case of a state agency, shall report to the Attorney*
26 *General the name of a company that the local public entity or the*
27 *Department of General Services has determined has submitted a*
28 *false certification under paragraph (2) of subdivision (d), together*
29 *with its information as to the false certification, and the Attorney*
30 *General shall determine whether to bring a civil action against*
31 *the company to collect the penalty described in subparagraph (A)*
32 *of paragraph (2) of subdivision (d).*

33 (2) *The awarding body of a local public entity may report to*
34 *the city attorney, county counsel, or district attorney the name of*
35 *a company that the awarding body determines has submitted a*
36 *false certification under paragraph (2) of subdivision (d), together*
37 *with its information as to the false certification, and the city*
38 *attorney, county counsel, or district attorney may determine*
39 *whether to bring a civil action against the company to collect the*

1 *penalty described in subparagraph (A) of paragraph (2) of*
2 *subdivision (d).*

3 *(3) If it is determined in an action under this subdivision that*
4 *a company submitted a false certification, the company shall pay*
5 *all reasonable costs and fees incurred in a civil action, including*
6 *costs incurred by the awarding body for investigations that led to*
7 *the finding of the false certification and all reasonable costs and*
8 *fees incurred by the Attorney General, city attorney, county*
9 *counsel, or district attorney.*

10 *(4) Only one civil action against a company to collect the*
11 *penalty described in subparagraph (A) of paragraph (2) of*
12 *subdivision (d) may be brought for a false certification on a*
13 *contract.*

14 *(5) A civil action to collect the penalty described in*
15 *subparagraph (A) of paragraph (2) of subdivision (d) must*
16 *commence within three years from the date the certification was*
17 *made.*

18 *(f) An unsuccessful bidder, or any other company other than*
19 *the awarding body, shall have no right to protest the award of a*
20 *contractor contract renewal on the basis of a false certification.*

21 *(g) This section does not create or authorize a private right of*
22 *action or enforcement of the penalties provided for in*
23 *subparagraph (A) of paragraph (2) of subdivision (d).*

24 ~~(e)~~

25 *(h) For the purposes of this section, the following definitions*
26 *shall apply:*

27 *(1) (A) "Boycott Israel" or "boycott of Israel" means refusing*
28 *to deal with, terminating business activities with, or taking other*
29 *actions that are intended to penalize, inflict economic harm, or*
30 *otherwise limit commercial relations with Israel or persons or*
31 *entities incorporated in Israel or doing business in Israel for reasons*
32 *other than business, investment, or commercial reasons. A*
33 *statement by a company that it is participating in a boycott of*
34 *Israel, or that it has initiated a boycott in response to a request for*
35 *a boycott of Israel or in compliance with, or in furtherance of, calls*
36 *for a boycott of Israel, may be considered by a public entity to be*
37 *evidence that a company is participating in a boycott of Israel.*

38 *(B) "Boycott" does not include any of the following:*

39 *(i) A decision based on business or economic reasons.*

(ii) Termination or prohibition of commercial activity within a particular jurisdiction that is required by federal or state law.

(2) “Company” means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority-owned subsidiaries, and parent companies, that exists for the purpose of making profit.

(3) “Public entity” shall have the same meaning as defined in subdivision (a) of Section 5100.

(d)

(i) This section shall not apply to a contract if either of the following apply:

(1) The total value of the contract is less than ten thousand dollars (\$10,000).

(2) The public entity makes a formal, written determination that the goods, services, information technology, or other matters that are the subject of the contract are necessary for the public entity to perform its functions and that, absent this exemption, the public entity would be unable to obtain said goods, services, information technology, or other matters for which the contract is offered.

~~2101. The provisions of this chapter shall supersede any inconsistent provisions in the charter of a charter city, charter county, or charter city and county.~~

~~2102. The Governor’s Office of Business and Economic Development shall recommend tools to incentivize business and academic collaboration, trade, and partnership between Israel and California and to disincentivize any and all barriers hindering that collaboration, trade, and partnership, pursuant to Senate Concurrent Resolution 121 of the 2014 Regular Session and Senate Concurrent Resolution 25 of the 2015 Regular Session. These incentives may include, but not be limited to, tax credits, partnership subsidies, innovative grant programs, job creation initiatives, and contracting preferences.~~

SEC. 4. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made

- 1 pursuant to Part 7 (commencing with Section 17500) of Division
- 2 4 of Title 2 of the Government Code.

O